

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHRIM BANK.

Plaintiff.

V.

PEARL BAY SEAFOODS, LLC, JOSEPH MARTUSHEV, MIRON I. BASARGIN, ALEXANDER I. KALUGIN, NIKOLAI IGNATIEVICH, AND IOASOPH MARTUSHEV, *in personam*; and the Vessel GLACIER BAY, Official Number 600325, in rem.

Defendants.

PORT OF SEATTLE,

Intervenor-Plaintiff.

V.

PEARL BAY SEAFOODS, LLC, and
GLACIER BAY, Official Number 600325,
in rem.

Complaint in Intervention Defendants.

I. INTRODUCTION

This matter comes before the Court on Plaintiff Northrim Bank (“Northrim Bank”)’s “Motion for Summary Judgment Foreclosing Preferred Ship Mortgage and For Judicial Sale of Vessel.” Dkt. #57. Defendants have not filed a timely response to the Motion. Intervenor-

1 Plaintiff Port of Seattle (“Port of Seattle”), however, requested in its Complaint that the Court
2 determine that its lien on the vessel Glacier Bay be considered superior to all other existing liens,
3 including Northrim Bank’s Preferred Ship Mortgage (“the Mortgage”). Dkt. #32 at 3. In
4 Northrim Bank’s Verified Answer to Port of Seattle’s Complaint, Northrim Bank opposed this
5 assertion, arguing that its mortgage was superior to other liens. Dkt. #33 at 3. For the reasons
6 stated below, the Court GRANTS the Motion and dismisses the *in rem* proceedings against vessel
7 Glacier Bay.

9 II. BACKGROUND FACTS

10 The Court incorporates the following relevant facts from Northrim Bank’s Motion and
11 Port of Seattle’s Complaint.

12 On June 8, 2020, Defendants granted the Mortgage to Northrim to secure a \$600,000.00
13 Commercial Promissory Note and a Business Loan Agreement, which collectively comprised the
14 loan from Northrim Bank to Defendants. Dkt. #1. This Mortgage was filed with the National
15 Vessel Documentation Center on June 8, 2020. On July 12, 2023, Northrim Bank filed its
16 Complaint against all Defendants to enforce the Mortgage, which Defendants had been in default
17 of since November 30, 2022. On August 18, 2023, the Court ordered the arrest of vessel Glacier
18 Bay and granted Northrim Bank’s motion to appoint Marine Lenders Services, LCC (“Marine
19 Lenders”) as the Substitute Custodian for Glacier Bay. Dkts. #8, #10. Vessel Glacier Bay was
20 arrested on September 6, 2023, and has been in Marine Lenders custody since that date.

21 On December 19, 2022, Port of Seattle recorded a maritime lien for necessaires against
22 Defendants for \$34,075.94 due to Defendants failure to pay moorage and utilities for vessel
23 Glacier Bay from February 4, 2022, through August 15, 2023. Dkt. #60, Dkt. #33 at 2. On
24 September 19, 2023, Port of Seattle filed a Motion to Intervene, Dkt. #23, which the Court
25 granted on October 4, 2023, Dkt. #31. Port of Seattle filed its Complaint on October 9, 2023,

1 asking this Court to consider its lien against vessel Glacier Bays superior to all other liens. Dkt.
 2 #32 at 3. Northrim Bank opposed this assertion in its Answer. Dkt. #33.

3 III. DISCUSSION

4 A. Legal Standard

5 Summary judgment is appropriate where “the movant shows that there is no genuine
 6 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
 7 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
 8 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
 9 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
 10 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*
 11 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*,
 12 969 F.2d 744, 747 (9th Cir. 1992)).

13 On a motion for summary judgment, the court views the evidence and draws inferences
 14 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*
 15 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
 16 inferences in favor of the non-moving party. See *O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*
 17 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient
 18 showing on an essential element of her case with respect to which she has the burden of proof”
 19 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

20 Upon application of a party, marshal, or other person having custody of the property, the
 21 court has the authority to order all or part of the property sold. See Supplemental Rules for
 22 Admiralty or Maritime Claims and Asset Forfeiture Actions (“SAR”) Rule C; SAR Rule E; Local
 23 Admiralty Rules (“LAR”) Rule 130, 145.

24 B. Analysis

1 There is no dispute that Defendants have defaulted on the Mortgage and agreements with
 2 Northrim Bank and Port of Seattle. There are also no disputes that Northrim Bank is entitled to
 3 foreclose the Mortgage. The sole dispute to Northrim Bank's Motion is Port of Seattle's assertion
 4 that its lien be considered superior to Northrim Bank's lien.
 5

6 46 U.S.C. § 31325 allows for a mortgagee, "on default of any term of the preferred
 7 mortgage," to "enforce the preferred mortgage lien in a civil action in rem[.]" 46 U.S.C. §
 8 31325(b)(1). District courts have original jurisdiction under § 31325(c). 46 U.S.C. § 31326
 9 directs courts on how to enforce preferred mortgage liens, maritime lines, and the priority of
 10 these claims. § 31326 declares that "the preferred mortgage lien . . . has priority over all claims
 11 against the vessel (except for expenses and fees allowed by the court, costs imposed by the court,
 12 and preferred maritime liens¹)[.]" 46 U.S.C. § 31326(b)(1). Only in the case of "a foreign vessel
 13 whose mortgage has not been guaranteed under chapter 537 of this title" does a maritime lien for
 14 necessities outweigh a preferred mortgage lien. § 31326(b)(2).

16 Vessel Glacier Bay, Coast Guard Official Number 600325, is not a foreign vessel and is
 17 owed and operated by Defendants, who are residents of Alaska. Dkt. #1. Port of Seattle's
 18 maritime lien for necessities does not meet the definition of "preferred maritime lien" under the
 19 statute². *See* 46 U.S.C. §§ 31326, 31301(5). Therefore, pursuant to 46 U.S.C. § 31326, Northrim
 20 Bank's lien against vessel Glacier Bay due to the Mortgage is superior to Port of Seattle's
 21 maritime lien for necessaires. The only liens superior to Northrim Bank's lien are expenses
 22

23

24 ¹ 46 U.S.C. § 31301(5) defines a "preferred maritime lien" as: (A) arising before a preferred
 25 mortgage was filed under section 31321 of this title; (B) for damage arising out of maritime tort;
 26 (C) for wages of stevedore when employed directly by a person listed in section 31341 of this title;
 27 (D) for wages of the crew of the vessel; (E) for general average; or (F) for salvage, including
 contract salvage.

² Port of Seattle recorded its maritime lien on October 19, 2022, over two years after Northrim
 Bank recorded the Mortgage on June 10, 2020.

1 accrued *in custodia legis*, which this Court determined were costs incurred by the substitute
 2 custodian, Marine Lenders, Northrim Bank's payments of insurance premiums to insure vessel
 3 Glacier Bay, and other payments Northrim Bank paid for Glacier Bay while under arrest. Dkt.
 4 #8; *see* 46 U.S.C. § 31326(b)(1).

5 Furthermore, courts have held that "attorneys' fees and interest accrued in the
 6 enforcement of a preferred ship mortgage are entitled to the same priority as the mortgage itself."
 7 *Transamerica Commercial Finance Corporation v. F/V SMILELEE, et al.*, 944 F.2d 186, 188
 8 (4th Cir. 1991). "[A]ttorneys fees and costs, when stipulated in the mortgage contract, may be
 9 validly recovered as part of the mortgage indebtedness secured." *Bradford Marine, Inc. V. M/V*
 10 *SEA FALCON*, 64 F.3d 585, 590 (11th Cir. 1995). The payment of attorneys' fees and costs was
 11 stipulated in Defendants' agreements with Northrim Bank. *See* Dkts. #1-1 at 3; #1-3 at 3, 15
 12 ("[a]ll of the duties, terms and obligations imposed by the Loan Agreement with regard to the
 13 Vessel are hereby incorporated into this Mortgage."), 19 ("Borrower agrees to pay to the Lender
 14 any and all reasonable advances, charges, costs and expenses, including Attorney Costs and the
 15 fees and expenses of attorneys[.]"). Accordingly, the Court concludes that Northrim Bank's
 16 attorney fees and costs are included in its Mortgage lien.

19 IV. CONCLUSION

20 Having considered the applicable briefing submitted by the parties and the entire record,
 21 the Court hereby finds and ORDERS:

23 1. Plaintiff Northrim Bank's "Motion for Summary Judgment Foreclosing Preferred
 24 Ship Mortgage and For Judicial Sale of Vessel," Dkt. #57, is GRANTED;
 25 2. Plaintiff Northrim Bank's expenses *in custodia legis* are first priority from the
 26 proceeds of the sale of vessel Glacier Bay;

- 1 3. Plaintiff Northrim Bank's Preferred Ship Mortgage lien is superior to and has priority
- 2 over Port of Seattle's maritime lien for necessaires;
- 3 4. Vessel Glacier Bay should be sold by the U.S. Marshal no earlier than sixty (60) days
- 4 from the date of this Order to a public sale consistent with LAR 145 and SAR Rule
- 5 E(9). All proceeds shall be deposited into the registry of the Court;
- 6 5. Plaintiff Northrim Bank shall provide the Court with an exact accounting of all
- 7 accrued interest and costs, the payment of the principle, and attorneys fees and costs
- 8 within five (5) days of the U.S. Marshal's sale;
- 9 6. After satisfying Northrim Bank's lien in full, any remaining proceeds of the sale shall
- 10 be paid to Port of Seattle to satisfy its maritime lien for necessaires, to the extent
- 11 possible.
- 12
- 13
- 14

15 DATED this 6th day of March, 2024.

16 
17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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